

# Exhibit 129

**From:** Carr, Chris  
**Sent:** Thursday, August 17, 2017 3:28 PM  
**To:** 'Zeppetello, Marc@BCDC'  
**Cc:** dsmith@sticeblock.com; Vickers, Kevin  
**Subject:** RE: Request for Extension of Time to File Statement of Defense in BCDC Enforcement File No. 2010.013 re Mark Sanders and Westpoint Harbor

Sure Marc. Because Kevin, who has to be down in our Palo Alto office today, will also join, let's use my conference line:

1-888-453-4271  
Access code: 4152916208

Thanks. Chris.

**Chris Carr**  
Partner

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**From:** Zeppetello, Marc@BCDC [mailto:marc.zeptello@bcdca.gov]  
**Sent:** Thursday, August 17, 2017 3:08 PM  
**To:** Carr, Chris  
**Cc:** dsmith@sticeblock.com; Vickers, Kevin  
**Subject:** Re: Request for Extension of Time to File Statement of Defense in BCDC Enforcement File No. 2010.013 re Mark Sanders and Westpoint Harbor

Chris,

Do you have time this afternoon for a call re: your request for an extension of time? How about 4 pm?

Thanks, Marc

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**From:** "[chris.carr@bakerbotts.com](mailto:chris.carr@bakerbotts.com)" <[chris.carr@bakerbotts.com](mailto:chris.carr@bakerbotts.com)>  
**Date:** Thursday, August 17, 2017 at 11:59 AM  
**To:** Marc Zeppetello <[Marc.Zeppetello@bcdca.gov](mailto:Marc.Zeppetello@bcdca.gov)>

Cc: "Ogata, Gregory@BCDC" <[gregory.ogata@bcdc.ca.gov](mailto:gregory.ogata@bcdc.ca.gov)>, David Smith <[dsmith@sticeblock.com](mailto:dsmith@sticeblock.com)>, "[kevin.vickers@bakerbotts.com](mailto:kevin.vickers@bakerbotts.com)" <[kevin.vickers@bakerbotts.com](mailto:kevin.vickers@bakerbotts.com)>

**Subject:** Request for Extension of Time to File Statement of Defense in BCDC Enforcement File No. 2010.013 re Mark Sanders and Westpoint Harbor

Marc:

Pursuant to 14 CCR 11322(f), Respondents request an extension of the 35-day time limit set by 14 CCR 11322(a) and (c) for submitting Respondents' statement of defense in response to the Violation Report/Complaint ("VR/C") for the Imposition of Administrative Civil Penalties (Enforcement Investigation No. ER2010.013) against Mark Sanders and Westpoint Harbor, LLC. For the reasons described below and other good cause, Respondents request a reasonable extension of 179 days, which would make Respondents' statement of defense due on Friday, February 23, 2018.

The VR/C alleges almost nine years of violations of BCDC Permit No. 2002.02 and the McAteer-Petris Act, going back to September 2008, and it seeks a total proposed penalty of \$504,000. Listed on Exhibit D of the VR/C, there are 35 separate enumerated violations with specified penalty amounts sought, but even that large number does not capture the full quantity of alleged violations. Multiple of the enumerated violations are amalgamations of factually distinct allegations that require separate and discrete responses. For example, alleged Violation No. 14 asserts "[n]umerous instances of unauthorized placement of fill and/or substantial change in use" and lists eight distinct bullets referring to eight wholly different alleged violations of the McAteer-Petris Act.

The history regarding development of the Westpoint Harbor marina goes back almost 30 years, to the late 1980s. The BCDC permitting proceedings alone go back more than 15 years. There have been multiple versions of the permit, all of which bear on the alleged violations in the VR/C.

The text of the VR/C, excluding 12 pages of exhibits, is 41 single-spaced pages in length and contains well over 1,000 alleged statements of fact. The Administrative Record offered in support of the VR/C contains 94 enumerated documents, many of which themselves contain additional documents. There are more than 865 pages within the 94 enumerated Administrative Record documents.

The VR/C cites numerous meetings and conversations occurring over a period of several years between Respondents and BCDC staff, during which facts and circumstances which are relevant to Respondents' defense to the alleged violations were discussed. In order to properly respond to the allegations, Respondents will need to interview and be prepared to submit testimony from third-party witnesses (such as Charles Jany from Redwood City) and to designate for cross-examination a number of witnesses (such as Brad McCrea and Andrea Gaffney from BCDC staff). Other important witnesses include former BCDC staff, such as Tom Sinclair and Ellen Miramontes. Based on preliminary research, it appears that such witnesses may no longer live in the San Francisco Bay Area, and it will take time to attempt to locate and contact them. Note that Tom Sinclair and Ellen Miramontes are authors or recipients of dozens of the documents contained in the Administrative Record BCDC has proffered. Respondents cannot reasonably be expected to do this without the benefit of additional time to prepare.

In addition to the large number of alleged facts and related documents at issue in the VR/C and the Administrative Record offered in support of the VR/C, there are many documents that are referenced in the VR/C or the documents produced as part of the Administrative Record that have not been provided to Respondents. For example, all of the construction plans referenced in Administrative Record Document No. 26 are missing from the Administrative Record, despite the fact that those plans are directly relevant to at least four of the alleged enumerated violations.

Under the California Public Records Act (“CPRA”), Respondents submitted to BCDC a request for public records related to Enforcement Investigation No. ER2010.013. The CPRA request was submitted as part of Respondents’ effort to ensure that a proper statement of defense can be prepared. Based on Respondents’ initial review of 15 “Redweld”-type expanding folders filled with hardcopy documents, it is estimated that there are more than 1,000 pages of relevant documents contained in BCDC’s hardcopy files that are non-duplicative of the more than 865 pages BCDC included within the 94 enumerated Administrative Record documents. Respondents have requested BCDC provide copies of such documents.

Yesterday, Respondents received some of those copies from BCDC, but Respondents are awaiting receipt of the substantial remainder. In addition, Respondents requested electronically stored public records, and, as of yesterday, BCDC has provided some electronically stored public records.

Respondents have begun to review the electronically stored public records that have been produced (including emails), but have been informed by you, in your email of Monday, August 14, that “other than emails printed for the hard-copy files, emails are managed by individual staff on their individual work computers and are deleted or retained in the discretion of each staff-person or in accordance with their individual practices.” Respondents are concerned that BCDC’s practices regarding emails may not comply with direction provided by the California State Archives division of the California Secretary of State, which states, “Email that provides insight into the organization and functions of an agency and contains content with historical value must be ‘filed,’ just as you would a paper record, in an e-folder with similar business or program items. ... An agency must have an email management policy in place to ensure record emails are not deleted alongside transitory emails. A policy should outline a routine for ensuring record emails are properly identified and saved.” At this time, it is unclear whether Respondents will need to follow-up with BCDC, or assert their CPRA-rights in litigation, in order to ensure that all electronically stored and hardcopy documents responsive to Respondents’ CPRA request are provided to Respondents.

Respondents’ counsel in this matter are new to this matter and have not had the benefit of representing Respondents throughout the more than 15 years of interactions with BCDC. Respondents’ previous counsel, Doug Aikins, was closely involved in discussion with BCDC regarding some of BCDC’s allegations going back to at least 2011. However, as you know, Mr. Aikins passed away, and Respondents’ current counsel does not have the benefit of his experience and knowledge concerning BCDC’s allegations.

In sum, the very substantial scope of this enforcement action (in terms of amount of the proposed penalty, the duration of the relevant time period, and the volume of relevant facts), the fact that not all relevant documents within BCDC’s possession are currently within Respondents’ possession, and Respondents’ present counsel’s short time working for Respondents support an extension of 179 days. The form of the statement of defense contained in Appendix I of BCDC’s regulations calls for, among other things, Respondents “to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility.” Additionally, the form calls for Respondents to “to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing.” Given the facts described above, it cannot reasonably be expected that Respondents can adequately respond to the VR/C in the 35-days that has been provided. Therefore, Respondents request an extension of 179 days to file their statement of defense (including declarations, a list of individuals Respondents wish to cross-examine, and supporting documentation) pertaining to all alleged facts and alleged violations in the VR/C.

**Chris Carr**  
Partner

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**From:** Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdca.gov>]  
**Sent:** Wednesday, August 16, 2017 5:41 PM  
**To:** Vickers, Kevin; Ogata, Gregory@BCDC  
**Cc:** Carr, Chris; David Smith; Zeppetello, Marc@BCDC  
**Subject:** Re: Response Records Request and Notice of a Typo in the Violation Report/Complaint

Kevin and Chris

Here is the link to the dropbox that contains BCDC's electronic files for Westpoint Harbor (WPH) and scans of the emails. A few comments follow (and as noted in the subject line, I am taking this opportunity to advise you of a typo in the Violation Report/Complaint).

<https://www.dropbox.com/sh/45l6gzc33damps4/AADT24sWNKA7zrGlOXzLvCuFa?dl=0>

First, on the electronic files, you will see that many of the folders in the Permit file are empty. That is in fact the case. We have an architecture set up for electronic filing, but it is not routinely used and it includes folders for many topics or categories that do not apply to all permits or to most permit amendments. As I mentioned in a prior email, the hard-copy files are the primary files used by staff for records retention and filing.

As also previously mentioned, we did not include in the electronic copy of the Enforcement file copies of the Violation Report, the documents listed on Index of the Administrative Record, or the outstanding discovery requests.

On the scanned emails, generally we did not print and scan attachments (although in some cases, Greg printed the first page of attachments). We omitted attachments primarily because of redundancy — the attachments should all be documents that you reviewed in the hard-copy file and may have asked to be copied, or in many cases are documents you almost certainly already have. We also omitted attachments because of the time that would have been required to print and scan them, and our commitment to get you copies of the emails by close of business today. However, if you would like the attachment or attachments to any emails, or to confirm what the attachment or attachments are to a particular email, please let Greg know, and we will get you copies of any attachments on request. I also noticed that we included a few emails between your office and me, but for the most part we did not include emails between BCDC staff and David Smith and/or your office, as previously agreed.